

46 Am. Jur. 2d Judges § 135

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

b. Appearance of Bias and Partiality as Grounds for Disqualification

§ 135. Disqualification where judge's impartiality might reasonably be questioned

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1), 49(2)

It is the duty of a presiding judge under both statutory and decisional law to recuse him- or herself when the judge has any doubt as to his or her ability to preside impartially or whenever his or her impartiality can be reasonably questioned.¹ The canons or rules of judicial conduct require that a judge should disqualify him- or herself in any proceeding in which his or her impartiality might reasonably be questioned,² and such rules are embodied in the Code of Judicial Conduct,³ and the federal statute regarding the disqualification of judges.⁴

Definition:

Pursuant to the Code of Judicial Conduct, the terms "impartial," "impartiality," and "impartially" mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge.⁵

Under such canons or rules, the test is not whether actual bias and prejudice exists, but whether a reasonable person would have factual grounds to doubt the impartiality of the court.⁶ The standard to be applied in considering judicial disqualification is whether the charge of lack of impartiality is grounded on facts that would create reasonable doubt concerning the judge's impartiality, not in the mind of the judge him- or herself or even, necessarily, in the mind of the litigant filing the motion, but rather in the mind of a reasonable person knowing all the facts known to the judge.⁷ Thus, the appearance-of-impropriety inquiry is an objective one, asking whether the conduct would create in reasonable minds a perception that the judge's ability to carry out his or her judicial responsibilities with integrity, impartiality, and competence is impaired.⁸ Note, however, some courts in applying such a canon have required that the movant or petitioner show some evidence of bias or prejudice of the judge.⁹

Observation:

The recusal of a judge is required under the Code of Judicial Conduct when a reasonable person might reasonably doubt the judge's impartiality because the rule anticipates that people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.¹⁰

Practice Tip:

Although a judge must consider the appearance of partiality in addition to actual bias when ruling on a motion to recuse for bias, when a party seeks a judge's recusal solely due to the appearance of partiality, a greater showing is required.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Tense and antagonist nature of proceedings for revocation of defendant's supervised release did not present a situation in which district judge's impartiality might reasonably be questioned, as would require judge's recusal, which was sought by defendant. 28 U.S.C.A. § 455(a). *United States v. Hudson*, 701 Fed. Appx. 603 (9th Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

- 1 State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984).
- 2 U.S. v. Cherry, 330 F.3d 658 (4th Cir. 2003); Ferguson v. State, 2016 Ark. 319, 498 S.W.3d 733 (2016); Carpenter v. U.S., 144 A.3d 1141 (D.C. 2016); In re Howes, 880 N.W.2d 184 (Iowa 2016); Robertson v. Gerakaris, 2015 ME 83, 119 A.3d 739 (Me. 2015), as corrected on other grounds, (Dec. 1, 2015); Troxel v. State, 875 N.W.2d 302 (Minn. 2016); State v. Belyea, 160 N.H. 298, 999 A.2d 1080 (2010); Dahl v. Dahl, 2015 UT 79, 2015 WL 5098249 (Utah 2015); State v. Gentry, 183 Wash. 2d 749, 356 P.3d 714 (2015), as amended on other grounds, (Oct. 19, 2015).
- 3 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A).
- 4 28 U.S.C.A. § 455(a).
As to disqualification under 28 U.S.C.A. § 455(a) on the basis that a judge's impartiality might reasonably be questioned, see Am. Jur. 2d, Federal Courts §§ 59 to 74.
- 5 A.B.A. Code of Judicial Conduct, Terminology.
- 6 Jefferson-El v. State, 330 Md. 99, 622 A.2d 737 (1993); Anderson v. State, 402 S.W.3d 86 (Mo. 2013); State ex rel. Bardacke v. Welsh, 102 N.M. 592, 1985-NMCA-028, 698 P.2d 462 (Ct. App. 1985); State v. Eastabrook, 58 Wash. App. 805, 795 P.2d 151 (Div. 2 1990).
A trial judge should recuse him- or herself when a litigant demonstrates that a reasonable person who knew the circumstances of the case would question the judge's impartiality under an objective standard of reasonableness, even though no actual bias or prejudice is shown. State v. Ely, 295 Neb. 607, 889 N.W.2d 377 (2017).
The passage of time can be a factor leading to a conclusion that any concerns about a judge's impartiality would be unreasonable. Com. v. Rivera, 473 Mass. 1003, 39 N.E.3d 732 (2015).
Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing. State v. Gamble, 168 Wash. 2d 161, 225 P.3d 973 (2010).
As to a discussion of actual bias and prejudice, and various principles based thereon, see §§ 123 to 133.
- 7 Riola v. Long Island Cycle & Marine, Inc., 352 F. Supp. 2d 365 (E.D. N.Y. 2005); In re Howes, 880 N.W.2d 184 (Iowa 2016); State v. Sawyer, 297 Kan. 902, 305 P.3d 608 (2013); Troxel v. State, 875 N.W.2d 302 (Minn. 2016); Rice v. State, 134 So. 3d 292 (Miss. 2014); Kalkowski v. Nebraska National Trails Museum Foundation, Inc., 290 Neb. 798, 862 N.W.2d 294 (2015).
- 8 Okrie v. State of Mich., 306 Mich. App. 445, 857 N.W.2d 254 (2014).
On a question of recusal, the court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his or her position is likely to be neutral, or whether there is an unconstitutional potential for bias. Williams v. Pennsylvania, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016).
- 9 Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 590 (Ct. App. 1984).
- 10 In re Howes, 880 N.W.2d 184 (Iowa 2016).
- 11 Snider v. Snider, 357 P.3d 1180 (Alaska 2015).

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